IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 20.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice S.K.KRISHNAN

Writ Appeal No.473 of 2001

Tamilnadu State Transport Corpn.,
Rep. by its Managing Director,
Salem Division - I Ltd.,
Formerly Anna Transport Corpn.,
Salem.

2. General Manager,
Tamilnadu State Transport Corpn.,
Salem Division-1,
Salem.

(C.T. accepted vide order
of court dated 26.2.2001
in CMP. No.3248 of 2001) ... Appellants

vs.

A. Periyasamy ... Respondent

For Appellant : Mr.V.R.Kamalanathan

For Respondent : Ms.Shyamala, for
M/s.A.V.Bharathi.

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Appeal under Clause 15 of Letters Patent against the Order dated 16.2.2000, made in W.P. No.13691 of 1996 on the file of this Court.

[WP.No.13691/96 presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent pertaining to his order bearing No.Ku.No.E.4/20923/ATC/96 dated 8.8.1996 and quash the same and consequently direct the respondents to continue the services of

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the petitioner in a suitable post in the first respondent Corporation]

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal has been filed against the order of the learned single Judge dated 16.2.2000 made in W.P. No.13691 of 1996, in and by which, the learned Judge, after quashing the notice dated 8.8.1996, directed the Transport Corporation to allot suitable duty to the writ petitioner/respondent herein or absorb him in a suitable alternate post in their Corporation.

2. Heard learned counsel for appellants as well as respondent/workman.

3. In the light of the order to be passed here-under, it is unnecessary for this Court to refer the entire factual matrix as stated in the affidavit and counter affidavit filed by both the parties before the learned single Judge, however, it is suffice to mention that the respondent herein was appointed as a Driver in the appellant/Transport Corporation on 01.04.1992 on regular basis. In an accident that took place on 21.12.1995, the driver/respondent herein sustained grievous injuries. He was hospitalised for a considerable period as he had sustained multiple fracture of femur in both the legs. As a result of the said accident, he had suffered permanent disability and the Medical Board found him to be unfit to continue as a Driver. When he sought for extension of leave for a further period of six months, the second appellant herein issued a notice on 8.8.1996 calling upon the respondent herein to explain as to why he should not be discharged from service. Questioning the same, he filed W.P. No.13691 of 1996 before this Court.

4. Learned single Judge, after recording a finding that the Driver sustained permanent disability and that he cannot be continued as a Driver in the light of the certificate issued by the Medical Board, based on the decisions of the Supreme Court as well as this Court, directed the Transport Corporation to provide him suitable alternate post in their Corporation with pay and service protection, hence, the present appeal.

5. Learned counsel appearing for the appellants/Transport Corporation, by drawing our attention to G.O.Ms.No.746, Transport Department, dated 2.7.1981, would contend that in the light of the instructions by the Government, the direction issued by the learned single Judge cannot be sustained.

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6. We are unable to accept the said contention for the following reasons:

There is no dispute regarding the permanent disability sustained by the respondent herein, which he met in the course of his employment in a road accident. The notice dated 8.8.1996 of the Transport Corporation also shows that in view of the disability sustained, the driver concerned was directed to appear before a Medical Board of Government Mohan Kumaramangalam Medical College Hospital, Salem. Based on the certificate issued by the Medical Board of the said Hospital, after finding that his services cannot be utilised as Driver and cannot be continued, the Transport Corporation issued the said notice dated 8.8.1996, calling upon him as to why he should not be discharged on medical grounds. It is clear from the particulars furnished in the said notice that the respondent herein is not only disabled due to the accident, which occurred in the course of his employment, but, he cannot continue as a Driver, as evidenced from the report of the Medical Board of the Government Hospital. In such circumstances, it is but proper on the part of the Transport Corporation to provide him a suitable alternate duty or job. It is also relevant to note that as per Section-47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the appellant being a Government Company/Organisation, the workman cannot be discharged on the ground of disability. All these aspects have been rightly considered by the learned single Judge and proper direction has been issued with pay and service protection.

7. We are in entire agreement with the said conclusion and we do not find any valid ground for interference. Accordingly, the appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
Tamilnadu State Transport Corporation
Salem Division - I Ltd.,
Formerly Anna Transport Corpn.,
Salem.

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2. General Manager,
Tamilnadu State Transport Corpn.,
Salem Division-1,
Salem.

One cc to Mr.V.R.Kamalanathan, Advocate SR.No.19003.

One cc to Mr.A.V.Bharathi, Advocate SR.No.19247.

W.A. No.473 of 2001.

JRG [co]
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